



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

to tell whether the concoction had reached the proper stage of consistency. His place has since been taken by the machine which accurately tests the resistance of the substance and records the effect on a dial. And so the judge who talks of public morals or public policy is more or less unconsciously applying standards of ethics and sociology to a case before him. He is swayed by "intuitions of convenience or fitness too subtle to be formulated, too imponderable to be valued, too volatile to be localized or even fully apprehended." A better trained bar may some day call these elements by their scientific names. But in the meantime we must recognize among the functions of the judge this application of the civilization around him through the personal element to the problems of our law.

Judge Cardozo's little book is a valuable contribution to the study of the judicial process. Lawyers have, to be sure, always had to be cognizant of this process in a measure and to shape their arguments accordingly. Its scientific study, however, is just beginning, and with its development we may expect not only a new understanding of the process of legal evolution, but possibly a reformation that will eventually affect both the teaching and the practice of law.

*University of Pittsburgh Law School.*

NATHAN ISAACS.

---

AMERICAN FOREIGN TRADE. By William F. Notz and Richard S. Harvey. Indianapolis: The Bobbs-Merrill Co. 1921. Pp. xv, 593.

This is a valuable book for those interested in the development of our foreign trade. Laymen wishing to know what is possible and probably immediately ahead in our foreign commerce will find here interesting and important information. Lawyers called on to advise and direct will find this a helpful manual as to what has been, and may be, done legally to meet varying situations likely to arise.

The five parts are: Introduction; Origin and Enforcement of Anti-Trust Laws; Coöperation, the Watchword in World Trade; The Webb-Pomerene Law; The Edge Act; Compacts in World Commerce; and an Appendix of Statutes and Forms.

A short history (eight pages) of our trade policy is given: the development of monopoly; origin and enforcement of anti-trust laws; a summary of the prosecutions under the Sherman Act of 1890,—only 18 in the first ten years of its existence, 192 in the next twenty years. The net legal results of these are: combinations by merger, complete ownership, or by holding companies for purposes of monopoly are unlawful; unfair methods of competition are evidence of a purpose to monopolize; but under the "rule of reason" mere size with unexercised power is not unlawful; *prosecution* in court is slow, uncertain, unsatisfactory in result, and disturbing to legitimate business.

These results led in 1914, not to the abandonment of the anti-trust policy, but to a different method of procedure: the creation of a Federal Trade Commission, with power, after investigation, "to *prevent* unfair methods of competition in commerce," and to order offenders "to cease and desist"

therefrom (Act Sept. 26, 1914, 38 Stat. 717); and defining more fully in the Clayton Act (Oct. 15, 1914, 38 Stat. 720) some unfair methods of competition, such as price discriminations, tying contracts, interlocking corporation directorates, and intercorporate stockholding.

These acts are analyzed and the results of *prevention* as compared with *prosecution* are indicated (44 pages) showing: the gradual growth of a code of unfair trade practices numbering more than 30 (Appendix, Exhibit XXIV); the consideration, in five years, of 1978 applications for complaints; 954 of which were discussed on the preliminary investigation; 570 investigations not completed; 454 completed, resulting in 603 formal complaints; 294 of these were heard, 56 dismissed for lack of proof, and 238 "cease and desist" orders were issued; 194 of these were voluntarily complied with; and in all, only five appeals to court were taken.

Then follows a rapid review (38 pages) of the world-wide trade combination movement in Europe before the Great War; the effect of the war; the rapid movement to rehabilitate such combinations immediately after the war, not only in Europe, but to extend them in Australia, Canada and Japan; the necessity of coöperation among exporters from this country if the United States is to secure and retain its proper position in world trade; the comprehensive report of the Federal Trade Commission (June 30, 1916) on the subject, with recommendations that combinations in export trade be allowed; the embodiment of these in the Webb-Pomerene bill in Congress; the endorsement of President Wilson, and its enactment April 10, 1918, "to promote export trade," by associations "entered into for the sole purpose of engaging in export trade and actually engaged solely in such," to be exempt from the Sherman Act as to *export*, but not as to *domestic* trade, and subject to the jurisdiction of the Federal Trade Commission over "unfair methods of competition."

Part IV (160 pages) is a discussion of the necessity, importance and meaning of this act; it breaks new ground in foreign trade; establishes higher standards of trade ethics; points a way of control and regulation of coöperative combinations, preserving their value and curbing their dangers, which has met with approval and partial adoption abroad.

Export trade means under the act "solely trade or commerce in goods, wares or merchandise exported or in the course of being exported from the United States or any territory thereof to any foreign nation, but not the production, manufacture or selling for consumption or for resale within the United States or any territory thereof." Price fixing or allotment of goods, division of territory, nor manufacturing expressly for export, nor operating transportation lines nor selling to brokers at seaboard for export, are not *exporting*,—this contemplates the physical transmission of actual goods, consummated in a sale thereof abroad, directly or through agents there located. Such associations cannot ship goods to Hawaii, Alaska, Porto Rico, the Philippines, the Panama Canal Zone, Guam, Tutuila, Virgin Islands, Guano Islands, Wake, Baker, Howland and Midway Islands, for they are not "foreign nations." Such associations may be formed in Hawaii

Alaska and Porto Rico,—they being territories,—but not in the others, for they (except the Philippines) are not territories, and the Philippines are probably excluded by the Philippine Act, August 29, 1916.

Such associations may be any combination of "persons, partnerships of corporations" formed by contract or otherwise; under state laws (Delaware being the favorite), or under federal law, should Congress so provide; foreigners operating only foreign plants could not, but if operating plants located in the United States could, it would seem, form such associations solely for exporting such goods from the United States. Such associations shall not restrain trade "within the United States," nor "the export trade of any competitor"; nor engage in "unfair methods of competition"; trusts to export foreign markets or to injure foreign competition by such unfair methods are subject to the jurisdiction of the Federal Trade Commission, although such acts occur abroad; this extra-territorial jurisdiction, though quasi-criminal, is probably constitutional and valid, at least as applied to residents and the "nationals" of the United States.

In Chapters XV, XVI and XVII (61 pages) are discussed the methods of forming and operating such associations; the economic questions to be considered and provided for; the proper legal clauses to meet these conditions, such as methods of control, stock issues, limitation of activities to export trade, violation of agreements, amalgamation only, or complete combination, joint representation in management, joint selling of trade-marked products, etc. These clauses are taken from important precedents, most of which are given in full in the Appendix, such as the organization papers of the Consolidated Steel Corporation, American Tobacco, Powder, Aluminum, Dye Stuffs, and Cement Association agreements. Forty-five such associations have been formed, comprising 754 members and about 1000 plants in 46 states, covering a large variety of products, and including both large and small producers.

It soon became apparent after the war that international trade could not be revived nor carried on without provision for extensive credit; the impoverished buyer could not buy except on long time credit, which the seller was not in position to extend. Congress has undertaken to meet this situation in the United States by the Edge Act (December 24, 1919), amending the Federal Reserve Act (December 23, 1913), authorizing the formation of corporations under federal charters to do foreign or international banking, to finance exports, and to carry on other financial operations necessary to promote the export trade of the United States; they are authorized to take the bills or notes of the foreign buyer, or foreign government securities, industrial stocks, or mortgages on foreign plants and property, and issue their own debentures against these, sell them, and pay the exporter for the goods he ships to the foreign purchaser.

Part V (33 pages) discusses the methods of forming such export banks and the rules and regulations imposed thereon by the Federal Reserve Board. Five or more persons may incorporate under the act, for twenty years, with a minimum capital stock of \$2,000,000, \$500,000 to be paid up; a majority of

shares must be continuously owned by citizens, or by firms or corporations the controlling interest in which is owned by citizens of the United States; their business is limited to international or foreign trade transactions, but they have extensive powers of discounting and dealing in foreign commercial paper and securities, purchasing coin, bullion and exchange, borrowing and lending, and issuing their own debentures not exceeding ten times their capital stock; and may establish branches abroad, all under the general supervision of the Federal Reserve Board, with whom they must file their incorporation papers and to whom they must report. The rules and regulations and forms of articles of association and organization certificates are given in full in the Appendix (Exhibits IX, XIV, XV).

Part VI (52 pages) reviews many of the important combinations heretofore or now existing in world commerce, such as Railmakers, Shipping, Tobacco, Explosives, Aluminum, Glass, Bottles, Quinine, Dye, Indigo, Wireless Telegraph, and Electric Lamps, and concludes that the time is at hand when such should be incorporated under international treaty provisions, and regulated under some sort of an international league or commission, with powers over international trade similar to those of the Federal Trade Commission, to prevent unfair methods of competition and trade practices therein. This, although a consummation devoutly to be wished, is perhaps too much to hope for soon.

The work is careful in its conclusions, accurate in its statements, temperate in its treatment, and very stimulating in its suggestions and outlook upon the great subject of which it treats,—the proper organization of American foreign trade.

H. L. WILGUS.

---

COMMONS DEBATES FOR 1629, critically edited, and an Introduction dealing with Parliamentary Sources for the Early Stuarts. Edited by Wallace Notestein and Frances Helen Relf. Research Publications of the University of Minnesota, Studies in the Social Sciences, No. 10. Minneapolis: The University of Minnesota. 1921. Pp. lxxvii, 304.

This volume is divided into three parts: (1) an introduction of some sixty pages; (2) carefully edited texts of five sources—the *True Relation*, *Nicolas's Notes*, *Grosvenor's Diary*, *Nethersole's Letters*, *March Second Account*; (3) an appendix with critical apparatus for a detailed study of the *True Relation*.

The introduction is necessarily a critical examination of the sources actually presented, but it is more than this: it is a most suggestive study of the nature of parliamentary source material for the early Stuart period; it is a valuable contribution to our knowledge of the embryonic newspaper and of the dissemination of news. It points out, as well, the growing desire to break away from parliamentary secrecy, to develop publicity for parliamentary proceedings, and thus to influence public opinion. One need not be a specialist in the seventeenth century to find here not only instructive hints on the assembling of source material, but also general information of interest and value to any student of history.